



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

UNITED STATES OF AMERICA §
VS. § **CASE NO. 1:17CR30**
TERRANCE DALE ROBINSON §

**FINDINGS OF FACT AND RECOMMENDATION ON PLEA OF TRUE
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b) and the Local Rules for the District Court, Eastern District of Texas, the District Court referred this matter for hearing and the submission of findings of fact and a report and recommendation pursuant to 18 U.S.C. §§ 3401(i) and 3583(e). The United States alleges that the defendant, Terrance Dale Robinson, violated conditions of supervised release imposed by United States District Judge Sim Lake of the Southern District of Texas. The United States Probation Office filed its *Petition for Warrant or Summons for Offender Under Supervision* (doc. #2) requesting the revocation of the defendant's supervised release. The Court conducted a hearing on November 15, 2017, in accordance with Federal Rules of Criminal Procedure 11, 32 and 32.1. The defendant was present and represented by counsel at the hearing. Having heard the evidence, this court factually finds that the defendant has violated conditions of supervision and

recommends that such violation warrants the revocation of his supervised release.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11, the Court finds:

- a. That the defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the plea of true in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.
- b. That the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, that his plea of true is a knowing and voluntary plea, not the result of force or threats, and that the plea is supported by an independent evidentiary basis in fact establishing each of the essential elements of the conduct.

STATEMENT OF REASONS

A. Procedural History

On September 23, 2009, The Honorable Sim Lake, U.S. District Judge of the Eastern District of Texas, sentenced Mr. Robinson after he pled guilty to 2 counts of aiding and abetting the possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine, both Class B felonies. Judge Lake sentenced the defendant to 78 months imprisonment as to each Count, to be served concurrently, followed by five years supervised release subject to the standard conditions of release, plus special conditions to include drug treatment and a \$200 special assessment. On December 30, 2013, Terrance Dale Robinson completed his period of imprisonment and began service of the supervision term.

On April 4, 2017, jurisdiction over Mr. Robinson's case was transferred from the Southern District of Texas under Docket No: 4:08CR00328-017 to the Eastern District of Texas and reassigned to the docket of the Honorable Thad Heartfield, United State Judge.

B. Allegations in Petition

The United States Probation Office alleges that the defendant violated a mandatory condition of his supervision as follows:

The defendant shall not commit another federal, state or local crime.

Specifically, on September 20, 2017, Terrance Robinson was convicted of Possession with Intent to Distribute 50 grams or more of Methamphetamine in the Eastern District of Texas. Mr. Robinson was sentenced to 110 months imprisonment, followed by four (4) years of supervised release.

C. Evidence presented at Hearing:

At the hearing, the Government proffered evidence in support of the allegation in the petition to revoke. The Government established that on November 22, 2016, Mr. Robinson pled guilty to the charge of Possession with Intent to Distribute 50 grams or more of Methamphetamine in case number 1:16-CR-51 and he was ultimately convicted and sentenced on that charge.

Defendant, Terrance Robinson, offered a plea of true to the allegations. Specifically, he agreed with the evidence summarized above and pled true to the allegation that he committed a new federal crime in violation of his supervision conditions.

D. Sentencing Guidelines; Findings and Recommended Disposition

The allegations, supporting evidence and plea of true warrant revocation of supervised release. *See* 18 U.S.C. § 3583(e)(3). The Court factually finds by a preponderance of the evidence that the defendant violated a mandatory condition of his supervised release by committing a new federal crime. This conduct constitutes a Grade B violation under U.S.S.G. § 7B1.3(a)(1). Upon finding a Grade B violation, the Court shall revoke the defendant's supervised release. *See* U.S.S.G. § 7B1.3(a)(1).

Based upon the Defendant's criminal history category of III and the Grade B violation, the sentencing guidelines suggest a sentence of imprisonment for a period ranging from 8 to 14 months. *See* U.S.S.G. § 7B1.4(a). Because the original offense of conviction were Class B felonies, the statutory maximum imprisonment term upon revocation is three (3) years. *See* 18 U.S.C. § 3583(e)(3).

The Fifth Circuit states that Chapter 7 of the Sentencing Guidelines regarding the revocation of supervised release is advisory only. *See United States v. Cade*, 279 F.3d 265, 271 n.2 (5th Cir. 2002) (citing *United States v. Montez*, 952 F.2d 854, 859 (5th Cir. 1992); *United States v. Headrick*, 963 F.2d 777, 782 (5th Cir. 1992)). Because Chapter 7 was promulgated as an advisory policy statement and there are no applicable guidelines for sentencing after revocation of supervised release¹, the Court may impose a greater or lesser sentence upon revocation. *United States v. Gonzalez*, 250 F.3d 923, 925 (5th Cir. 2001). Further, a sentence imposed for revocation will be upheld unless it is in violation of the law or plainly unreasonable. *Id.* *See also United States v.*

¹ *See U.S. Sentencing Guidelines Manual*, Ch. 7, pt. A, cmt. 1 ("At this time, the Commission has chosen to promulgate policy statements only.")

Pena, 125 F.3d 285, 288 (5th Cir. 1997) (citations omitted).

Here, the evidence and the defendant's own admission supports a finding that the defendant violated his supervision conditions. Mr. Robinson pled true, agreed with the Court's recommended sentence for that violation, and waived his right to allocute before the District Court.

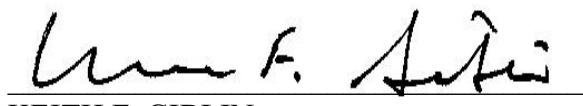
Accordingly, based upon the defendant's plea of true, the agreement of the parties, and the evidence presented in this case, it is the recommendation of the undersigned United States Magistrate Judge that the District Court accept the plea of true and revoke Defendant's supervised release. The undersigned magistrate judge recommends that the District Court order Defendant to serve a term of **twelve (12) months** for the revocation, with no further supervision to follow. The Court also recommends placement in the Federal Medical Center (FMC) in Fort Worth, Texas, for service of the prison term, if possible, to allow Mr. Robinson to receive medical treatment for certain health conditions.

OBJECTIONS

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. *See 28 U.S.C. § 636(b)(1)*. A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual

evidence and not merely by reviewing and blindly adopting the magistrate judge's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5th Cir. 1981) (per curiam).

SIGNED this the 21st day of November, 2017.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE